

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA,	§	
	§	
Plaintiff,	§	
	§	
VS.	§	Criminal No. 5:16-CR-013-D
	§	
JOHN W. BEAKLEY,	§	
	§	
Defendant.	§	

MEMORANDUM OPINION
AND ORDER

In this memorandum opinion and order, the court addresses two motions for discovery filed by defendant John W. Beakley (“Beakley”). Beakley is charged in a 12-count indictment with the offense of failure to pay over payroll tax, in violation of 26 U.S.C. § 7202, and aiding and abetting, under 18 U.S.C. § 2. The following motions are pending for decision: Beakley’s July 24, 2017 motion for disclosure of extraneous acts evidence, and Beakley’s July 24, 2017 motion for disclosure of all evidence favorable to the defendant under *Brady v. Maryland* and *Kyles v. Whitley*. The trial is set for September 25, 2017.

I

In Beakley’s July 24, 2017 motion for disclosure of extraneous acts evidence, he moves to compel the government to disclose evidence of any prior convictions, alleged violations of the law not alleged in the indictment, or extraneous acts allegedly done by him or in this cause so that he can make certain determinations based on this information. Citing Fed. R. Evid. 404(b), Beakley requests that each disclosure should include, but not be

limited to, a description of the other crime, wrong, or act the government intends to offer, including the date or dates on which the other crime, wrong, or act allegedly occurred and the place or places at which such crime, wrong, or act occurred; the names and addresses of all persons who were witnesses to or have knowledge of such crime, wrong, or act; copies of all documents, materials, or other tangible objects that the government intends to offer into evidence in conjunction with such Rule 404(b) evidence; all evidence that is exculpatory within the purview of *Brady v. Maryland*, 373 U.S. 83 (1963), and *United States v. Bagley*, 473 U.S. 667 (1985), with regard to such other alleged crimes, wrongs, or acts evidence (i.e., all evidence that detracts from the probative value of such evidence, or which indicates that the probative value of the evidence might be outweighed by its prejudicial effect under Rule 403); and a statement of the purpose for which such evidence is offered (i.e., a declaration from the government of whether the evidence is being offered to show motive, opportunity, or intent, etcetera). Beakley also requests that, if the government chooses to litigate uncharged conduct, he be provided with advance notice so that he may prepare his defense to the uncharged conduct contemplated by the government to be introduced against him, he may exercise his Sixth Amendment right to present defensive evidence in defending himself against the Rule 404(b) accusations, his counsel will be able to render effective assistance, and to avoid unnecessary delay and disruption of the flow of trial.

The court grants the motion to the extent that the government must comply with Fed. R. Evid. 404(b). In addition, to the extent Beakley requests discovery that the government is required to disclose under *Brady* or *Bagley*, the motion is granted. To the extent Beakley's

requests exceed what *Brady*, *Bagley*, or Rule 404(b) requires, the motion is denied. The government must make any required disclosures, and provide the notice that Rule 404(b) requires, no later than September 8, 2017 at 5:00 p.m.


III

In Beakley's July 24, 2017 motion for disclosure of all evidence favorable to the defendant, he moves to compel the government to disclose nine subcategories, and a tenth catch-all subcategory, of evidence that he maintains would be exculpatory under the authority of *Brady* and *Kyles v. Whitley*, 514 U.S. 419, 436 (1995). Beakley requests that the court order the government to produce all such evidence at least 14 days in advance of trial.

To the extent Beakley requests discovery that the government is required to disclose under *Brady* or *Kyles*, the motion is granted. To the extent his requests exceed what *Brady* or *Kyles* requires, the motion is denied. The government must make any required disclosures no later than September 8, 2017 at 5:00 p.m.

SO ORDERED.

August 25, 2017.


SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE